

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 98-016-S - ORDER NO. 98-710  
SEPTEMBER 15, 1998

IN RE: Petition of Midlands Utility, Inc. for a	)	ORDER RULING
Declaratory Order Concerning Service to	)	ON COMPLAINT
Gordon Amick Property at 4027 Delree	)	
Street, West Columbia.	)	

This matter comes before the Public Service Commission of South Carolina by way of the Petition for a Declaratory Order of Midlands Utility, Inc. ("Midlands"). In its Petition, Midlands raised the question of whether Gordon Amick ("Amick") owes tap fees and sewer service charges for the interconnection of his property at 4027 Delree Street, West Columbia, to Midlands' sewer collection system. Amick filed an answer in which he contended that a 1985 letter from Midlands was a contract giving Amick the right to free sewer service to his property on Delree Street.

A hearing was held on this matter on July 15, 1998, at 2:30 p.m. in the Commission's hearing room. The Honorable William Saunders, Vice Chairman, presided. Midlands Utility, Inc. was represented by Frank R. Ellerbe, III, Esquire; Mr. Gordon Amick was represented by Patrick J. Frawley, Esquire; and Florence P. Belser, Staff Counsel represented the Commission Staff.

In support of its Petition, Midlands presented the testimony of Charles B. Parnell, President of Midlands and several exhibits relating to the 1985 letter and the location of Midlands sewer collection system in the Delree Street area.

Mr. Parnell testified that in 1985 Midlands was required by the Department of Health and Environmental Control ("DHEC") to close its treatment facility in the Parkwood subdivision. Accordingly, Midlands made plans to connect its pump station serving the Parkwood subdivision with its facilities serving the Westgate subdivision. This connection was to be accomplished by a line running from Westgate down Delree Street to Parkwood Drive. While this work was in progress, Mr. Parnell was approached by Mr. Amick. Mr. Amick informed Mr. Parnell that he planned to develop his property on Delree Street in the future and that he may want to connect to Midlands' sewer system. Mr. Parnell agreed to change the route of his sewer line so that it crossed Amick's property and to reserve capacity in his system for up to 50 gallons per minute. Amick was to grant Midlands a utility easement in exchange for the reserved capacity. A map of the area from the Parkwood pump station to the Westgate subdivision was entered as Hearing Exhibit 1.

Mr. Parnell testified that he sent Amick a letter dated May 23, 1985, in which he outlined the agreement to provide 50 gallons per minute capacity in his nearby pump station and force main in exchange for a utility easement on Amick's property. The letter was entered as Hearing Exhibit 2. According to Mr. Parnell, his intent was to reserve capacity in his system for Amick. Parnell explained that reserved capacity in a wastewater system is a valuable commodity and that some treatment facilities charge a capacity fee in addition to sewer charges and tap fees. Parnell testified that he never indicated that Amick would be entitled to free sewer service.

Mr. Parnell also stated there were no topographical or financial reasons to build the line across Amick's property. The wastewater from the area is treated by the City of Cayce. The utility easement was never recorded and the letter was never filed with the Commission. Mr. Parnell first discovered the interconnection in 1996 when DHEC became involved with Mr. Amick's property.

Mr. Parnell testified that \$2,265.63 in tap fees were due for Amick's interconnection of eight mobile homes, one residence, and one office. The total sewer service charges due for 1995 through 1997 from Amick were \$5,623.55. A set up fee of \$25.00 was also due.

Amick presented the testimony of Gordon L. Amick. Amick introduced a plat of the property. Mr. Amick testified that he understood Midlands would provide him free sewer service up to 50 gallons per minute in exchange for granting Midlands a utility easement. Mr. Amick stated that the agreement was to last forever.

Amick testified that he sold the property to Edgar Stockton in 1986 then later foreclosed on the mortgage in 1990 or 1991. When Amick reacquired the property, a pump serving all the buildings on his property was connected to Midlands sewer line. His land contains eight mobile homes, one residence, and one office building. Amick testified he has never paid tap fees or any sewer service charges for the Delree Street property to Midlands or the City of Cayce.

After full consideration of the applicable law, the pleadings, and the evidence presented by the parties, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Midlands Utility, Inc., is a “public utility” as defined by S.C. Code Ann. Section 58-5-10 (1976) providing sewer service in its service areas within South Carolina. Its operations in South Carolina are subject to the jurisdiction of the Commission pursuant to S.C. Code Ann. Section 58-5-210 (1976) and the regulations of the Commission.

2. Mr. Amick is an individual owning property at 4027 Delree Street, West Columbia, South Carolina. The property contains eight mobile homes, a single family residence and a commercial office building.

3. Mr. Amick has sewer collection facilities on the property including a pump station which were interconnected to Midlands sewer collection system without the knowledge or consent of Midlands. Amick has never paid tap fees or sewer service charges to Midlands.

4. The Commission finds that on or about May 23, 1985, Midlands reached an agreement with Amick in which Midlands agreed to reserve 50 gallons per minute capacity in its nearby pump station and force main sewer line in exchange for granting Midlands a utility easement.

The Commission’s finding is based on the testimony, exhibits and circumstances surrounding the events. The Commission concludes from Mr. Parnell’s testimony that Midlands had no compelling reason to provide Amick free sewer service in exchange for a utility easement. Midlands had access to connect its Parkwood Drive pump station to Westgate subdivision by crossing property owned by Midlands and then running its

sewer line down Delree Street in the public right-of-way. Mr. Parnell testified that there was no topographical reason to change the route of the line. He also indicated that there was no substantial difference in the cost of running the line over Amick's property versus the original route chosen by Midlands. Therefore, it was not a matter of necessity that Midlands obtain a utility easement from Amick to construct its project.

The exhibits presented during the hearing also support the Commission's finding that the agreement was to reserve capacity in Midlands system. The agreement was memorialized in a letter from Midlands to Amick dated May 23, 1985, which was entered into the record as Hearing Exhibit 2. The agreement specifically provides that "capacity" will be provided to Amick. The agreement does not include a duration term and does not indicate that "free sewer service" will be provided in exchange for an easement. The Commission notes that some treatment facilities charge a capacity fee in addition to sewer charges and tap fees.

The map introduced as Hearing Exhibit 1 also illustrates that Midlands had an alternative route available to interconnect its Parkwood pump station to Westgate subdivision. It was not necessary for Midlands to cross Amick's property; and therefore, the utility easement was not a necessity for the construction of the Midlands' system.

The Commission concludes from the circumstances described above that Midlands agreed to reserve capacity in its system. The Commission also notes that the value of providing free sewer service perpetually would greatly exceed the value of the utility easement on Amick's property. As Amick indicated, the system was connected to

Midlands at some point during the period between 1986 and 1990 when Mr. Stockton owned the property.

Furthermore, Midlands possessed the statutory power to condemn Amick's property if as a public utility it was necessary to use that route to construct its facilities. When property is condemned, the owner receives the value of the property taken and any diminution in value of the remaining property.

5. The Commission further finds as a matter of fact that the term "capacity" as used in the May 23, 1985, letter is a term of art used by public utilities providing sewer services to describe the amount of wastewater flow which can be accommodated by a utility's facilities. The Commission also finds that the term "capacity" as used in the May 23, 1985, letter would be given the same interpretation according to its plain, ordinary meaning. Webster's Ninth New Collegiate Dictionary (1989) defines "capacity" as "the potential or suitability for holding, storing or accommodating."

6. The Commission finds that Amick owes Midlands a total of \$7,349.95 for sewer charges for the period from 1995 through August, 1998. The evidence indicated that for the three year period between 1995 and 1997, sewer charges for the property totaled \$5,623.55. Amick also owes Midlands sewer service charges for January through August 1998 as listed in the approved Midlands tariff totaling \$1,726.40.

7. The Commission finds that Amick does not owe Midlands for tap fees as the evidence of record shows the tap was made sometime prior to 1991 when Mr. Amick reacquired the property from Mr. Stockton. Since the tap was made more than 3 years

before the filing of this Complaint, the recovery of tap fee is barred by the statute of limitations.

8. The Commission finds that Amick owes Midlands the \$25.00 set-up fee as Midlands must perform the administrative functions of establishing the account on the books.

9. The Commission finds that Amick owes Midlands a total of \$7,374.95 for sewer charges and set-up fee.

#### **CONCLUSIONS OF LAW**

A. The Commission concludes that Midlands was required by law to charge Amick the same rate as the rest of its similarly situated customers unless Midlands obtained prior approval of the Commission. Pursuant to S.C. Code § 58-5-210, the Commission is authorized to supervise and regulate the rates and services of Midlands. Midlands is not authorized to charge any individual or entity a rate different from that filed with the Commission unless approved by the Commission pursuant to S.C. Code Regs. 103-503. Since prior Commission approval was not obtained, Midlands could not as a matter of law, forego its tap fees and sewer service charges.

B. The Commission concludes that Midlands was required by law to obtain Commission approval of any special contract for service. Pursuant to S.C. Code Regs. 103-503(D) each customer within a given classification is to be charged the same approved rate as every other customer within the classification, unless reasonable justification is shown for use of a different rate and a contract has been filed and

approved by the Commission. Thus, if the contract were to be given the interpretation urged by Amick, it would be unenforceable.

C. The Commission concludes as a matter of law that Amick's interpretation of the 1985 letter violates the law regarding filed tariffs as contained in S.C. Code Ann. §58-5-210 and the requirement of Commission approval of special contracts for service pursuant to 26 S.C. Code Regs. 103-503(D). It is well settled that all laws of the state that relate to the subject of the contract are part of that contract. *See, Ayres v. Crowley*, 205 S.C. 51, 30 S.E.2d 578 (1944); *City of North Charleston v. North Charleston District*, 289 S.C. 438, 346 S.E.2d 578 (1986). To interpret the May 23, 1985, letter as a contract which provides free sewer service in exchange for an easement, circumvents the Commission's regulations and abrogates the authority of the Commission to approve contracts which purport to charge a rate different from the rates on file with the Commission. On the other hand, to interpret the May 23, 1985, letter as reserving capacity in the system is an interpretation which is consistent with the laws in effect at the time the contract was made.

D. The Commission concludes as a matter of law that Amick's interpretation of the 1985 letter would make it unenforceable as a perpetual contract to provide free sewer service. A perpetual contract is unenforceable unless the perpetual nature of the contract is an express term. "Historically, perpetual contracts have not been favored in South Carolina and are generally upheld only where the perpetual nature of the agreement is an express term of the contract." Carolina Cable Network v. Alert Cable TV, Inc., 316 S.C. 98, 447 S.E.2d 199, 201 (S.C. Sup. Ct. 1994). Since the letter dated

May 23, 1985, contained no period for its duration and no definite time can be implied from the nature of the agreement or from the circumstances surrounding it, it is unenforceable as a perpetual contract. Childs v. City of Columbia, 87 S.C. 566, 70 SE 296 (1911).

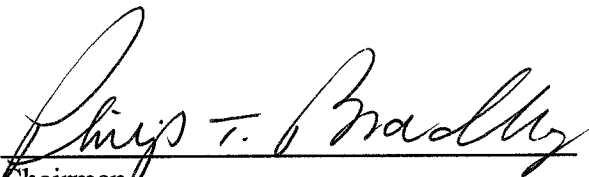
E. Pursuant to S.C. Code Ann. § 15-3-530, an action upon a contract, obligation or liability, express or implied, must be brought within three years. S.C. Code Reg. 103-533(4)(a) provides that if the utility has undercharged any customer and the customer has knowledge of being undercharged without notifying the utility of such, then the utility may recover the deficient amount for the entire interval provided that the applicable statute of limitations is not exceeded. Midlands filed its complaint on January 9, 1998. Therefore, the Commission concludes as a matter of law that Amick is responsible for past sewer charges and set-up fee due Midlands under its approved tariffs for the three year period beginning January 1995, which is three years prior to the action being filed, to the date of this Order. The Commission concludes that the total amount due Midlands from January 1995 through August 1998 is \$7,374.95.

F. S.C. Code Reg. 103-503(D) provides that each customer within a given classification shall be charged the same approved rate, including tap fees, as every other customer within that classification, unless reasonable justification is shown for the use of a different rate, and a contract for the different rate has been filed. The Commission concludes as a matter of law that in regard to future sewer service Amick is to be charged the same schedule of approved rates as other customers within the classifications established in the Midlands tariff pursuant to S.C. Code Reg. 103-503 (1976).


THEREFORE IT IS ORDERED THAT:

1. Amick shall pay to Midlands Utility \$7,374.95 for sewer charges and a set-up fee for the time period beginning January 1995 through August 1998. This amount shall be paid in equal installments over a twelve month period with no interest.
2. Amick shall pay sewer charges on a going forward basis pursuant to the Midlands tariff as approved by the Commission. Amick will be billed beginning with Midlands' next billing cycles which covers sewer service for the month of September, 1998.
3. This Order shall remain in full force and effect until further Order of this Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Acting Executive Director

(SEAL)